

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KEVIN BRATHWAITE

Plaintiff,

v.

MARCELLO RISPOLI, et al.,

Defendants.

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C. A. No. 04-1542-GMS

**STATE DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME**

1. Kevin Brathwaite ("Brathwaite") is an inmate incarcerated and under the supervision of the Delaware Department of Correction ("DOC") housed at the Delaware Correctional Center ("DCC") Smyrna, Delaware.

2. On or about December 22, 2004, Brathwaite commenced this action by filing a Complaint pursuant to 42 U.S.C. §1983 with leave to proceed *in forma pauperis* alleging Eighth and Fourteenth Amendment Due Process violations against numerous personnel ("State defendants") of the Department of Corrections. ("DOC") (Complaint, *passim*). (D.I. 2). Presently, the remaining defendants are: Marcello Rispoli, Matt Stevenson, Stephanie Carpenter and Robert Wallace. Defendant Violet Dunn's Motion to Dismiss/Motion for Summary Judgment was granted by Order of this Court on June 21, 2007. (D.I. 105).

3. On or about June 1, 2007, Defendants filed a Motion for Summary Judgment and an accompanying Opening Brief with affirmative defenses in Support

thereof. (D.I. 102, 103). On or about June 15, 2007, Brathwaite filed an Answering Brief. (D.I. 104). According to Dist. Ct. D. Del., R. 7.1.2.(a) a Reply Brief is due on or before June 25, 2007.

4. Due to the press of other litigation and long planned summer vacations counsel is not able to file a Reply Brief within the time required. In order to properly respond to Brathwaite's Answering Brief counsel for State Defendants has requested additional information from Department of Correction personnel. While this information is forthcoming, one of the DOC personnel involved in this case is on vacation until Monday, July 2nd necessitating this request for an enlargement of time. Counsel therefore, requests an enlargement of time of two (2) weeks from the June 25, 2007, deadline for filing a Reply Brief until on or before July 9, 2007.

5. This is State Defendants first request for an extension of time for filing a Reply Brief.

6. There is no trial date scheduled in this case.

7. A form of order is attached to this motion that will grant the State Defendants a two (2) week extension from June 25, 2007, until on or before July 9, 2007, in which to file State Defendants' Reply Brief.

WHEREFORE, the State Defendants respectfully request that this Honorable Court grant their Motion and enter an Order, substantially in the form attached hereto, enlarging State Defendants' time to file a Reply Brief until on or before July 9, 2007.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, ID#3879
Deputy Attorney General
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302)577-8400
ophelia.waters@state.de.us

Dated: June 22, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KEVIN BRATHWAITE

Plaintiff,

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16.5 CERTIFICATION

In compliance with Local Rule of Civil Procedure 16.5, counsel for the State Defendants making the request for an extension of time files this certification and states:

I certify that I have sent a copy of the request for an extension of time to file a Reply Brief to the State Defendants.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, ID#3879
Deputy Attorney General
Department of Justice
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302)577-8400
Attorney for Defendants

Dated: June 22, 2007

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CERTIFICATION OF COUNSEL

The undersigned counsel hereby certifies, pursuant to Rule 7.1.1 of the
Local Rules for the District of Delaware, that:

1. Brathwaite is an inmate incarcerated at the Delaware Correctional Center, Smyrna, Delaware.
2. Brathwaite is not able to be reached by telephone; therefore, counsel for the State Defendants has spent no time in attempting to reach an agreement on the subject of the Motion for Enlargement of Time.
3. The undersigned counsel assumes that the Motion is opposed.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Ophelia M. Waters
Ophelia M. Waters, ID#3879
Deputy Attorney General
Department of Justice
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302)577-8400
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2007, I electronically filed *State Defendants' Motion for Enlargement of Time in which to file a Reply Brief* with the Clerk of Court using CM/ECF. I hereby certify that on June 22, 2007, I have mailed by United States Postal Service, the document to the following non-registered participant: Kevin C. Brathwaite; SBI #315294; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
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